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March 19, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in CC Docket No. 01-92 and CC Docket No. 96-262

Dear Ms. Dortch:

On March 18, 2003, Karen Brinkmann and I met on behalf of U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific") with Jared Carlson, Stacy Jordan, Joseph Levin, and Peter Trachtenberg of the Wireless Telecommunications Bureau and Steve Morris, Tamara Preiss, and Victoria Schlesinger of the Wireline Competition Bureau concerning TelePacific's joint provision of exchange access services with commercial mobile radio service ("CMRS") carriers for the delivery of 8YY calls to interexchange carriers ("IXCs"). The attached enclosures were distributed during the meeting.

As described during the meeting, TelePacific is a competitive local exchange carrier ("CLEC") that is entitled to compensation for the access services it and certain unaffiliated CMRS carriers jointly provide IXCs. TelePacific sends traffic to IXCs via either direct connect trunk groups or an ILEC tandem. For non-direct connects, TelePacific provides the local switching functions, performs the database dips required to identify the IXC to which the traffic should be routed, and provides the transport functions necessary to connect customers to the incumbent local exchange carrier ("ILEC") tandem before the traffic is delivered to the IXC. TelePacific pointed out that IXCs should not be permitted to benefit from access services provided by CLECs without paying for such services. TelePacific's rates are at or below the benchmark level, and it therefore is entitled to payment from IXCs. The Commission has made clear that carriers may not withhold payment for tariffed services but should first pay under protest and then seek redress. TelePacific urged the Commission to grant US LEC's Petition.

In response to staff questions during yesterday's meeting, TelePacific notes that it currently has five accounts with three CMRS carriers for joint provisioning of access services. During February 2003, 13.1% of TelePacific's total IXC traffic minutes (originating and terminating) was transported over TelePacific's direct connect trunk groups. TelePacific charges the tariffed access rate of \$0.013 per minute and a monthly rate per port (DSO or DS1) for direct connects. For calls transported to the ILEC tandem, TelePacific charges the tariffed access rate of \$0.018 per minute. The company's access tariff includes a separate rate element for 800 database queries, which is applied on a per-query basis. TelePacific transports ANI for 8YY calls directly to the IXC for direct connects and to the ILEC tandem for non-direct connects.

In accordance with Commission rules, this letter and the attachments are being filed in duplicate in the aforementioned dockets. If you have any questions, please contact me at (202) 637-1023.

Sincerely,

Tonya Rutherford
Counsel for U.S. TelePacific Corp.

Enclosures

cc: Jared Carlson
Stacy Jordan
Joseph Levin
Peter Trachtenberg
Steve Morris
Tamara Preiss
Victoria Schlesinger

**Briefing Sheet on CLEC-CMRS Jointly-Provided Access Service
for Delivery of 8YY Traffic**

- TelePacific carries originating 8YY traffic for certain unaffiliated cellular carriers.
- When a cellular customer dials a toll-free number, the cellular carrier transports the call over dedicated trunks to TelePacific's switch. TelePacific's switch recognizes the 8YY number, and the SS7 data links determine how the call should be routed. If the call is identified in the 800 database as an interexchange call for Carrier X, Carrier X's carrier identification code is returned and appended to the message. TelePacific transports the call from its wire center to the ILEC tandem, and the call is delivered to Carrier X.
- CLECs, such as TelePacific, are entitled to recover access charges from IXC's.
 - TelePacific performs functions equivalent to those that the ILEC would provide if TelePacific were not present in the calling path.
 - TelePacific provides the local switching functions, performs the database dips required to identify the IXC to which the traffic is routed, and provides the transport functions necessary to connect customers to the ILEC tandem before the traffic is delivered to the IXC.
 - The FCC has concluded that CLECs may seek compensation for the same elements of switched access service as ILECs, including common line charges, local switching and transport.
 - The FCC also has acknowledged that LECs may recover access charges from IXC's when interstate interexchange traffic passes from CMRS customers to IXC's via LEC networks.
 - Finally, the FCC has recognized in the past that CMRS carriers are entitled to recover access charges from IXC's.
- TelePacific's presumptively reasonable rates may be imposed by tariff.
 - TelePacific's rates are at or below the benchmark level, and it therefore is entitled to payment from IXC's.
 - The FCC concluded in the CLEC Access Charge Order that, if a CLEC charges rates at or below the benchmark level for originating and terminating access service, including toll-free 8YY traffic, the CLEC's rates will be presumed just and reasonable and therefore may be tariffed.
- An IXC's failure to pay a CLEC's tariffed rate for access service constitutes self-help and violates Section 201 of the Communications Act of 1934, as amended.
 - The FCC has concluded carriers may not withhold payment for tariffed services but should first pay and then seek redress.

Originating 8YY Call

